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IN THE

Supreme Court of the United States

October Term, 1966

No. 1096

PAUL DADDONA and BENJAMIN DADDONA,
Petitioners,

against

ZONING BOARD OF APPEALS OF THE CITY OF STAMFORD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

SAMUEL GRUBER
GRUBER & TURKEL
218 Bedford Street
Stamford, Connecticut
Attorneys for Petitioners

SAMUEL GRUBER,
WILLIAM M. KUNSTLER,
STEVEN J. HYMAN,
of Counsel.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

To the Justices of the Supreme Court of the United States:

The petitioners herein pray that a writ of certiorari issue to review the final order of the Supreme Court of Errors of the State of Connecticut entered on November 1, 1966, which dismissed, for lack of proper diligence in prosecuting the appeal, petitioners' appeal from the judgment of the Court of Common Pleas of Fairfield County affirming the order of the Respondent, Zoning Board of Appeals of the City of Stamford, wherein it was held that petitioners were in violation of certain zoning ordinances of the City of Stamford.

Opinion Below

No opinion was rendered by the Supreme Court of Connecticut. The order of the Court is attached hereto as Appendix A.

Jurisdiction

The final order of the Supreme Court of the State of Connecticut was entered on November 1, 1966. On January 30, 1967, Mr. Justice Harlan granted petitioners additional time in which to file this petition, up to and including March 30, 1967. The jurisdiction of this Court is invoked under Title 28 U.S.C. § 1257(3).

Questions Presented

1. Whether the dismissal of petitioners' appeal from the judgment of the lower court by the Connecticut Supreme Court of Errors, without consideration of the merits of said appeal, was a denial of petitioners' rights to due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States?

2. Whether the Supreme Court of Errors may constitutionally dismiss an appeal without considering the merits thereof from the judgment of a lower court, when petitioners were entitled as of right to such appeal and where petitioners complied in all respects with the rules of practice in perfecting the same?

3. Whether the Supreme Court of Errors acted arbitrarily and capriciously in dismissing petitioners' appeal for failure to prosecute said appeal with proper diligence when petitioners pursuant to the rules of practice then in effect secured extensions of time to file their brief on appeal and had filed it prior to the time of the expiration of said extensions?

4. Whether the Supreme Court of Errors of the State of Connecticut entrapped petitioners into filing their appeal at a later time when it arbitrarily refused to abide by the sole procedure to extend the time to perfect an appeal which had long been available and sanctioned as proper and which was invoked and relied upon by petitioners in determining the time in which to file the appeal?

Statement of Facts

On February 28, 1963, petitioners herein were issued certain notices of violation pursuant to the zoning ordinances of the City of Stamford, for over-occupancy of a building, notwithstanding that petitioners were not the owners of the building in issue. Review of this notice was duly sought before the Zoning Board of Appeals of the City of Stamford on the grounds, *inter alia,* that petitioners were not the proper parties for such violation notices and that they should not be subject to the threatened criminal sanctions which were applicable to such violations. The Zoning Board affirmed the violation notices as applied to petitioners and review was sought as provided by statute in the Court of Common Pleas of Fairfield County.

On January 14, 1966, the Court of Common Pleas affirmed the findings of the Zoning Board. Notice of Appeal to the Supreme Court of Connecticut was timely filed on January 28, 1966. Said appeal is available as of right pursuant to the laws of Connecticut.

In order to perfect their appeal, petitioners had to await the printing and filing of the Record by the Clerk of the Court of Common Pleas with the Supreme Court. Such filing occurred on June 29, 1966 and petitioners received a copy thereof several days later. Pursuant to the Rules of Practice of Connecticut, petitioners were required to file their brief on appeal within 30 days of the date of filing of the record *unless* an extension of time was granted by the Court of Common Pleas upon a showing of good cause. (Connecticut Practice Book § 665 and § 724; the texts of said sections are set forth in Appendix B for the convenience of the Court.) On August 2, 1966, upon application of petitioners, the Court of Common Pleas extended the time to file briefs until September 15, 1966, specifically finding that good cause was shown for such extension. On September 12, 1966 the time to

file briefs was further extended until November 1, 1966, the court again finding that good cause had been shown for such extension. Said extensions were in full conformity with the Rules of Practice.

On or about October 27, 1966, the petitioners duly filed their brief on appeal, with the Supreme Court of the State of Connecticut, thereby perfecting the appeal in every respect. However, the Supreme Court then ordered petitioners to show cause why the appeal should not be dismissed for failure diligently to prosecute same. On November 1, 1966 the Supreme Court, *suo moto,* dismissed the appeal for failure to prosecute with proper diligence, without considering the merits of the appeal, citing § 696 (Appendix B) and notwithstanding that petitioners had at all times adhered to the procedure necessary to perfect same for a determination on the merits. Petitioners are now faced with criminal prosecution for the alleged violations, which prosecutions were stayed pending appeal.

Reasons Why the Writ Should be Granted

The refusal of the Supreme Court of Errors of Connecticut to consider the merits of petitioners' appeal when petitioners were entitled as of right to such consideration by statute and when they have complied with the procedure set forth, is a denial of Due Process of law under the Fourteenth Amendment. Where the right of appeal exists the courts of the state must apply the requirements necessary to perfect same, reasonably and in conformity with the rules set forth. "[T]he Constitutional right under the Due Process Clause is . . . the right not to be denied an appeal for arbitrary or capricious reasons." *Griffin* v. *Illinois*, 76 S. Ct. 585, 599 (dissent by Justice Harlan). Cf. *Chapman* v. *State of Texas,* 242 F. Supp. 378 (D.C. Tex., 1965).

In the case at bar the Supreme Court of Errors refused to consider petitioners' appeal because they were allegedly dilatory in filing same. However, the procedure set forth for perfecting the appeal was at all times complied with by petitioners. Under § 665 and § 724 of the Practice Book, if petitioners could not file their brief within 30 days after filing of the record, they were specifically allowed to seek an extension of time before the trial court from which the appeal was taken. Upon good cause shown the trial court could grant additional time within which to file the briefs.

Petitioners relied on this procedure and requested that they be given additional time within which to file the briefs. The trial court considered the applications and after finding that good cause was shown for such request, petitioners were ultimately given until November 1, 1966 in which to file. They fully complied with this order and filed their briefs on October 27, 1966.

For the Supreme Court to now refuse to hear the appeal is in contravention of the very rules in effect. Petitioners sought the extensions as the law set forth and relied on their effectiveness as the basis for the time in which to file. To now be dismissed for alleged dilatory conduct because the procedures set forth were followed is an act so inherently unfair as to be a denial of due process of law.

The summary and capricious treatment accorded petitioners' appeal by the Supreme Court of Errors of Connecticut raises serious federal questions that should be considered by this Court. The right to an appeal is guaranteed by Connecticut law, yet petitioners were, without reason or cause, denied same. Further, petitioners were lulled by the law of Connecticut into relying on clear and existing procedure for perfecting their appeal which the Supreme Court of the state then arbitrarily decided not to follow.

This Court in *Griffin* v. *Illinois, supra,* specifically held due process requirements are applicable to the procedural

requirements of appeal even if there is no inherent constitutional right to appeal in the first place. This theory is as applicable to civil proceedings, for the erroneous lower civil court judgment will cause equally serious and substantial consequences if not corrected. In fact, the petitioners in the case at bar will now be subject to criminal prosecution of the violation orders they sought to review in the appeal.

Further, this Court has long noted that a state must enforce its laws fairly and in a reasonable and just fashion. See *Palko* v. *Connecticut,* 58 S. Ct. 149. It cannot set down procedures that can be disregarded at the whim of those in power. Procedures and rules are enacted in order to permit warning to those it effects and to bring order to the system of justice. If, however, these procedures are disregarded without warning then one must proceed at his peril. It is just this peril that has deprived petitioners of their rights. They relied on a procedure which was suddenly not to be accorded them for reasons that are not known. Had there been no procedure for extending time to appeal, petitioners would have proceeded under those rules. Howeyer, once such procedure did exist petitioners had the right to rely on it without fear that, without notice of warning, their appeal could be dismissed.

CONCLUSION

Wherefore, it is respectfully prayed that a writ of certiorari issue to the Supreme Court of Errors of the State of Connecticut to review the order of dismissal of the appeal from the judgment of the Court of Common Pleas of Fairfield County.

Respectfully submitted,

SAMUEL GRUBER

GRUBER & TURKEL
218 Bedford Street
Stamford, Connecticut

Attorneys for Petitioners.

SAMUEL GRUBER,
WILLIAM M. KUNSTLER,
STEVEN J. HYMAN,
of Counsel.

Appendix A

SUPREME COURT

FAIRFIELD COUNTY

No. 6031

November 1, 1966

PAUL DADDONA *et al.*

v.

ZONING BOARD OF APPEALS OF THE CITY OF STAMFORD

ORDER DISMISSING APPEAL

It appearing that the plaintiffs in the above-entitled case have failed to prosecute their appeal from the Court of Common Pleas in Fairfield County at Stamford with proper diligence, it is, under Practice Book § 696,

ORDERED by the Supreme Court, suo motu, that the appeal be and hereby is dismissed.

By the Court,

KING
Chief Justice

Appendix B

Sec. 665. *Extensions of Time*

The judge who tried the case, or the court in which it was tried, may, for good cause shown, extend the time provided for filing the appeal or filing any paper or taking any other steps necessary to perfect the appeal, except as otherwise provided in these rules. Such extensions shall only be granted upon a written motion filed in quadruplicate with the clerk of the court wherein the case was tried. The clerk shall forward one copy to the judge who heard the case and one to opposing counsel. No such motion shall be granted until the expiration of five days after it has been filed, and if during that period an adverse party notifies the judge that he desires to be heard, it shall be granted only after hearing upon due notice to the parties, provided, if the adverse party endorses his consent on the motion, it may be immediately granted. The receipt of any such motion and the ruling of the judge thereon shall be noted on the docket. The time for filing a notice of intention to appeal may not be extended. No extension of time for the filing of the appeal, the filing of briefs, the giving of security for costs, or the payment of the entry or record fee, shall be granted unless the original motion for extension is filed before the time for taking the appeal or filing the notice of intention to appeal or filing the briefs, as the case may be, has expired and any subsequent and any subsequent motion is filed before the expiration of any previous extension. Extensions of time for filing motions in this court and for filing pleadings of such motions may be granted in accordance with Sec. 687. (1963 Connecticut Practice Book.)

Sec. 696. *Lack of Diligence in Prosecuting or Defending Appeal.*

If a party shall fail to prosecute an appeal or writ of error with proper diligence, this court may, on motion by

any other party to the appeal or writ of error, or of its own motion, dismiss the appeal or writ of error with costs. If a party shall fail to defend against an appeal or writ of error with proper diligence, this court may, on motion by any other party to the appeal or writ of error, or of its own motion, set aside in whole or in part the judgment under attack, with costs, and direct the entry of an appropriate final judgment by the trial court against the party guilty of the failure. If that party is a defendant in the action, the directed judgment may be in the nature of a judgment by default for such amount as may, upon a hearing in damages, be found to be due. If that party is a plaintiff in the action, the directed judgment may be one dismissing the action as to him, and said judgment shall operate as an adjudication upon the merits. The statutory provisions regarding the opening of judgments of nonsuit and by default shall not apply to a judgment directed under the provisions of this rule. (1963 Connecticut Practice Book.)

Sec. 724. *Filing and Distributing Briefs*

Within thirty days after the mailing of the printed records to counsel, the appellant shall file with the clerk of the court who prepared the record fifteen copies of his brief and appendix, if any, and if there are more than two parties to the appeal, a sufficient number of additional copies to supply such counsel of record as are concerned in the appeal. The clerk shall forthwith mail a copy to each such counsel, a copy to the clerk of this court for Hartford County and ten to the messenger of this court at Hartford for the use of the judges. The appellee shall file his brief within twenty days after the filing of the appellant's brief in the same manner and with a like number of copies, to be distributed by the clerk as provided in regard to the

appellant's brief. The appellant may within twenty days after the filing of the appellee's brief file a reply brief, to be filed in the same manner and with a like number of copies, to be distributed by the clerk as hereinabove stated. For the purposes of this rule, on a reservation the plaintiff below shall be regarded as the appellant, as shall be the original appellant where there is a cross appeal. The time for filing briefs may be extended in accordance with the provisions of Sec. 665.

At or before the argument, each party shall furnish twenty-five copies of his brief and appendix, if any, to the reporter, out of which he will supply the various law libraries of the state. (1963 Connecticut Practice Book)

SUPREME COURT, U.S.

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Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

THEODORE GODLIN,

Assistant Corporation Counsel
of the City of Stamford,
Attorney for Respondent.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

To the Justices of the Supreme Court of the United States:

The Respondent Zoning Board of Appeals of the City of Stamford respectfully requests denial of the Petition for Writ of Certiorari in the above cited appeal. The purpose of said petition is to have this Court review a ruling of the Supreme Court of Connecticut dismissing an appeal to it upon a zoning matter for lack of proper diligence under its own

rule as set forth in Connecticut Practice Book, Section 696, set forth in Appendix "A" hereof.

OPINION BELOW.

The ruling of the Supreme Court of Connecticut which petitioners seek to have reviewed is set forth in Appendix "B" hereof.

QUESTION PRESENTED.

Whether the Supreme Court of the United States should review an order of the Supreme Court of Connecticut dismissing a zoning appeal for lack of proper diligence when said order was made pursuant to one of the procedural rules of said Supreme Court of Connecticut, specifically, Section 696 of the Connecticut Practice Book?

STATEMENT OF FACTS.

This case began on February 28, 1963, when the Zoning Enforcement Officer of the City of Stamford issued an order to the petitioners herein to cease occupancy of a certain building of the petitioners by four-families when under the Zoning Regulations of the City of Stamford only two families are allowed in said building. Upon appeal of said order to the Zoning Board of Appeals of the City of Stamford, said Board upheld and modified the order of the Zoning Enforcement Officer. Upon appeal of said decision to the Court of Common Pleas of Fairfield County, said Court decided on January 14,

1966, that the Zoning Board of Appeals had acted reasonably in upholding the order of the Zoning Enforcement Officer.

An appeal was then taken by the petitioners herein to the Supreme Court of the State of Connecticut and during the pendency of said appeal, the petitioners requested upon two occasions extensions of time in which to file their briefs.

On November 1, 1966, the Supreme Court of Connecticut, upon its own motion, dismissed the appeal of the petitioners herein for failure to prosecute with proper diligence under Section 696 of the Practice Book of Connecticut.

REASONS WHY THE WRIT OF CERTIORARI SHOULD NOT BE GRANTED.

The case of **Johnson v. State of New Jersey,** 86 S. Ct. 1772, 384 U.S. 719, 16 L. Ed. 2d 882 (N.J. 1966), recently decided by this Court, held in part that where the New Jersey Supreme Court invoked a state procedural rule as a bar to a reconsideration of a petitioner's claim, said judgment would not be reviewed by this Court. The Court stated, "This is an adequate state ground which precludes us from testing the coerced confession claim on the present review, whatever may be the significance of the state court's reliance on its procedural rule in federal habeas corpus proceedings." Supra, 16 L. Ed. 882, 893.

It is well settled that the Supreme Court of the

United States does not ordinarily re-examine the local law as applied by local courts. See **Skelly Oil Company v. Phillips Petroleum Co.**, 70 S.Ct. 876, 339 U.S. 667, 94 L.Ed. 1194 (Okl. 1950).

The case at Bar is controlled by the above rules. This case arose as a local zoning matter. The Supreme Court of the State of Connecticut dismissed the appeal from a lower court judgment upholding the decision of the Zoning Board of Appeals of the City of Stamford, invoking Section 696 of the Rules of the Supreme Court. It is a principle of the law of Connecticut that an appeal to the courts from the action of administrative officers or boards exists only as a privilege granted by statutory authority. **Bardes v. Zoning Board of the City of Stamford,** 141 Conn. 317, 106 A2d 160, (1955). As such, said privilege is conditional upon full compliance with the statutes.

The petitioners for this Writ of Certiorari are in effect requesting this Court to re-examine the interpretation made by the State Supreme Court of its own rules. There is nothing in the record to show that said interpretation was capricious. Under these circumstances, this Court should not, under the above cited decisions, review the matter.

The case of **Griffin v. Illinois,** 76 S. Ct. 585, 351 U.S. 12, 100 L. Ed 891, cited by petitioners, is not strictly in point. That case involved a situation where the right of appeal by an indigent defendant was effectively taken away by a rule requiring a printed transcript. There is no such question in the case at Bar. The Connecticut rule requiring diligence in prosecuting an appeal applies to all appellants uni-

formly and cannot be invoked if there are no delays. The only question here presented is whether the state court may dismiss an appeal for lack of proper diligence under its rule. The petitioners were in no way denied their privilege of appeal — but they were expected and required to comply with the procedural requirements for perfecting such an appeal.

Wherefore, it is respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

ZONING BOARD OF APPEALS OF
THE CITY OF STAMFORD,

By THEODORE GODLIN,
Assistant Corporation Counsel,
Attorney for the Respondent.

APPENDIX "A"

Sec. 696. Lack of Diligence in Prosecuting or Defending Appeal.

If a party shall fail to prosecute an appeal or writ of error with proper diligence, this court may, on motion by any other party to the appeal or writ of error, or of its own motion, dismiss the appeal or writ of error with costs. If a party shall fail to defend against an appeal or writ of error with proper diligence, this court may, on motion by any other party to the appeal or writ of error, or of its own motion, set aside in whole or in part the judgment under attack, with costs, and direct the entry of an appropriate final judgment by the trial court against the party guilty of the failure. If that party is a defendant in the action, the directed judgment may be in the nature of a judgment by default for such amount as may, upon a hearing in damages, be found to be due. If that party is a plaintiff in the action, the directed judgment may be one dismissing the action as to him, and said judgment shall operate as an adjudication upon the merits. The statutory provisions regarding the opening of judgments of nonsuit and by default shall not apply to a judgment directed under the provisions of this rule. (1963 Connecticut Practice Book.)

APPENDIX "B"

SUPREME COURT

Fairfield County

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November 1, 1966

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Paul Daddona et al.

v.

Zoning Board of Appeals of the
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Order Dismissing Appeal

It appearing that the plaintiffs in the above-entitled case have failed to prosecute their appeal from the Court of Common Pleas in Fairfield County at Stamford with proper diligence, it is, under Practice Book § 696,

Ordered by the Supreme Court, suo motu, that the appeal be and hereby is dismissed.

By the Court,
King
Chief Justice